

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN FLOYD, individually and on behalf
of all others similarly situated,

Case No. 2:22-cv-01599-KKE

PROTECTIVE ORDER

Plaintiff,
v.

AMAZON.COM, INC. and APPLE INC.,

Defendants.

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary, trade
 3 secret, commercially sensitive, or private information for which special protection may be
 4 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 5 following Stipulated Protective Order. The parties acknowledge that this agreement is consistent
 6 with LCR 26(c). It does not confer blanket protection on all disclosures or responses to
 7 discovery, the protection it affords from public disclosure and use extends only to the limited
 8 information or items that are entitled to confidential treatment under the applicable legal
 9 principles, and it does not presumptively entitle parties to file confidential information under
 10 seal. The availability of protection pursuant to this Stipulated Protective Order does not preclude
 11 a party from withholding information protected by any applicable privilege. Nothing in this
 12 Stipulated Protective Order shall restrict in any way the right of a Producing Party to disclose or
 13 make use of its own documents or Discovery Material. Under LCR 26(c)(2), the parties began
 14 with the District's Model Protective Order, and have identified departures from the model in a
 15 redlined copy, attached as Exhibit 1.

16 2. DEFINITIONS

17 2.1 Challenging Party: A Party or Non-Party that challenges the designation of
 18 information or items under this Order.

19 2.2 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel
 20 (as well as their support staff) to whom it is reasonably necessary to disclose the information for
 21 this litigation.

22 2.3 Designating Party: A Party, Non-Party, person, or entity designating documents
 23 or information as Protected Information under this Order.

24 2.4 Discovery Material: All items or information, including from any non-party,
 25 regardless of the medium or manner in which it is generated, stored, or maintained (including,
 26 among other things, testimony, transcripts, and tangible things), that are produced or generated in
 27 disclosures or responses to discovery in this matter.

1 2.5 Expert: A person with specialized knowledge or experience in an area pertinent
2 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness
3 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
5 or of a Party's competitor.

6 2.6 In-House Counsel: Attorneys (and their support staff, including legal secondees
7 and economists) who are employees or contractors of a Party and whose responsibilities include
8 overseeing, working on, or supporting this action. In-House Counsel does not include Outside
9 Counsel of Record or any other outside counsel.

10 2.7 Non-Party: Any natural person, partnership, corporation, association, or other
11 legal entity not named as a Party to this action.

12 2.8 Outside Counsel of Record: Attorneys who are not employees of a Party to this
13 action but are retained to represent or advise a Party to this action and have appeared in this
14 action or are affiliated with a law firm that has appeared on behalf of that Party in this action.

15 2.9 Party: Any Party to this action, including all its officers, directors, employees,
16 consultants, vendors, retained Experts, and Outside Counsel of Record (and their support staff).

17 2.10 Producing Party: A Party or Non-Party that produces Discovery Material in this
18 action.

19 2.11 Protected Material: Any Discovery Material that is designated as "Confidential"
20 or "Highly Confidential – Attorneys' Eyes Only."

21 2.12 Receiving Party: A Party that receives Discovery Material from a Producing
22 Party.

23 **3. PROTECTED MATERIAL**

24 3.1 "CONFIDENTIAL" Material: Documents and tangible things that may be
25 produced or otherwise exchanged that 1) the Designating Party reasonably believes contain,
26 describe, or disclose sensitive, non-public, confidential information, such as (a) court records,
27 whether in this District or other courts, currently maintained under seal; (b) information subject

1 to a non-disclosure or confidentiality agreement; (c) employee personnel information; (d) a Non-
2 Party's commercially sensitive information, trade secrets, or competitive or strategic initiatives
3 that are not readily ascertainable and for which the Designating Party has taken reasonable steps
4 to maintain confidentiality; and (e) personal identifying information subject to redaction under
5 Local Rule 5.2, or 2) the Designating Party's own commercially sensitive information, such as
6 (a) financial or accounting information; (b) commercially sensitive internal communications or
7 information; and (c) business negotiations, transactions, and dealings with Non-Parties.

8 3.2 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material:

9 Extremely sensitive materials that qualify as "CONFIDENTIAL" and that the Designating Party
10 reasonably believes contain highly sensitive business or personal information, the disclosure of
11 which to another Party or Non-Party would create a risk of competitive or commercial
12 disadvantage to the Designating Party.

13 3.3 This Order does not envision the production of source code or object code.

14 Should the Parties agree to source code discovery, or be ordered to produce such discovery, they
15 will enter a separate stipulated source code supplement to this Order.

16 **4. SCOPE**

17 The protections conferred by this agreement cover not only Protected Material (as
18 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
19 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
20 conversations, or presentations by Parties or their Counsel, Non-Parties, and/or Experts that
21 might reveal Protected Material.

22 However, the protections conferred by this agreement do not cover information that is in
23 the public domain or becomes part of the public domain through trial or otherwise.

24 **5. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 5.1 Basic Principles. A Receiving Party may use Discovery Material that is disclosed
26 or produced by another Party or by a Non-Party in connection with this case only for
27 prosecuting, defending, or attempting to settle this litigation. Apart from disclosures to the

1 Producing Party and its current employees and agents, which nothing in this Protective Order
 2 prohibits, Protected Material may be disclosed only to the categories of persons and under the
 3 conditions described in this agreement. Protected Material must be stored and maintained by a
 4 Receiving Party at a location and in a secure manner that ensures that access is limited to the
 5 persons authorized under this agreement. For the avoidance of doubt, for purposes of this
 6 Section 5 of the Protective Order, Protected Material can be accessed from a physical location
 7 outside of the United States so long as the Protected Material is maintained on a server within the
 8 United States and in no way leaves the server within the United States (i.e., Protected Material
 9 must be accessed view-only, and cannot be downloaded, photographed, printed, or accessed in
 10 any other manner that would cause it to physically or electronically leave the United States
 11 server).

12 5.2 Disclosure of “CONFIDENTIAL” Material. A Producing Party may designate
 13 Discovery Material as “CONFIDENTIAL” if it contains or reflects confidential, proprietary,
 14 and/or commercially sensitive information. Unless otherwise ordered by the court or permitted in
 15 writing by the Designating Party, a Receiving Party may disclose any Confidential Material only
 16 to:

17 (a) the Receiving Party’s Outside Counsel of Record, as well as employees of
 18 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
 19 this litigation;

20 (b) Experts and their staff to whom disclosure is reasonably necessary for this
 21 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 22 such expert or consultant is not a current officer, director, or employee of a Party or of a
 23 competitor of a Party, nor anticipated at the time of retention to become an officer, director or
 24 employee of a Party or of a competitor of a Party. Such expert or consultant accesses the
 25 materials in the United States only, and does not transport them to or access them from any
 26 foreign jurisdiction, except though the method described in 5.1;

27 (c) the court, court personnel, and court reporters and their staff;

(d) copy, imaging, document management, and electronic discovery services retained by Counsel to assist in the management of Confidential Material and who execute the “Agreement to Be Bound by Protective Order” attached as Exhibit A, provided that counsel for the Party retaining such services instructs the service not to disclose any Confidential Material to third parties and to immediately return all originals and copies of any Confidential Material;

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

(g) graphics, translation, design, and/or trial consulting personnel, having first agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A;

(h) mock jurors who have signed an undertaking or agreement agreeing not to publicly disclose Protected Material and to keep any information concerning Protected Material confidential;

(i) any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order;

(j) to assist in the defense of this litigation, in-house counsel and non-attorney staff who assist them, including paralegals, economists, and support staff, who are not responsible for competitive decision making; and

(k) any other person who has agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A with the prior written consent of the Producing Party, and on such conditions as may be agreed or ordered, but such consent shall not be

1 unreasonably withheld, or upon order of the Court.

2 5.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

3 Material. A Producing Party may designate Discovery Material as “HIGHLY CONFIDENTIAL
4 – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is extremely
5 confidential and/or sensitive in nature and the Producing Party reasonably believes that the
6 disclosure of such Discovery Material is likely to cause economic harm or significant
7 competitive disadvantage to the Producing Party. Unless otherwise ordered by the court or
8 permitted in writing by the Designating Party, a Receiving Party may disclose any Highly
9 Confidential – Attorney’s Eyes Only Material only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
12 information for this litigation;

13 (b) Experts, professional jury or trial consultants, and their employees and
14 staff, to whom disclosure is reasonably necessary for this litigation and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A); such expert or consultant is not a
16 current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at
17 the time of retention to become an officer, director, or employee of a Party or of a competitor of
18 a Party; such expert or consultant is not involved in competitive decision-making, as defined by
19 U.S. Steel v. United States, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
20 competitor of a Party; and such expert or consultant accesses the materials in the United States
21 only, and does not transport them to or access them from any foreign jurisdiction, except though
22 the method described in 5.1;

23 (c) the court, court personnel, jury, and court reporters and their staff;

24 (d) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information;

26 (e) copy, imaging, document management, and electronic discovery services
27 retained by Counsel to assist in the management of Highly Confidential – Attorneys’ Eyes Only

1 Material and who execute the "Agreement to Be Bound by Protective Order" attached as Exhibit
2 A, provided that counsel for the Party retaining such services instructs the service not to disclose
3 any Highly Confidential Material to third parties and to immediately return all originals and
4 copies of any Confidential Material;

5 (f) graphics, translation, design, and/or trial consulting personnel, having
6 first agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A;

7 (g) any mediator who is assigned to hear this matter, and his or her staff,
8 subject to their agreement to maintain confidentiality to the same degree as required by this
9 Protective Order; and

10 (h) any other person who has agreed to be bound by the provisions of the
11 Protective Order by signing a copy of Exhibit A with the prior written consent of the Producing
12 Party, and on such conditions as may be agreed or ordered, but such consent shall not be
13 unreasonably withheld, or upon order of the Court.

14 5.4 Filing Protected Material. Before filing Protected Material or discussing or
15 referencing such material in court filings, the filing Party shall confer with the Designating Party,
16 in accordance with Local Civil Rule 5(g). Any motion to seal filed by the Receiving Party, where
17 a Designating Party must make the showing required by Local Civil Rule 5(g)(3)(B) in response
18 to the motion, must be noted for consideration no earlier than the fourth Friday after filing.
19 Failure to satisfy these requirements will result in the motion to seal being denied, in accordance
20 with the strong presumption of public access to the Court's files.

21 5.5 Disclosure of Protected Material at Hearings or Trial: Any person receiving
22 Protected Material shall not reveal or discuss such information at any pre-trial hearing or hearing
23 open to individuals not otherwise authorized to receive Protected Material except as follows: In
24 the event a person receiving Protected Material intends to use Protected Material in any
25 proceeding open to individuals not entitled to receive Protected Materials, such person shall, at
26 least 14 days in advance, move to seal the proceeding or give the person that produced the
27 Protected Material written notice. In the latter case, the Parties shall thereafter meet and confer to

1 determine whether the Protected Material can be so used. If they cannot reach agreement, the
 2 person who produced the Protected Material may file a motion to seal the proceeding. If,
 3 however, the party that seeks to use the Protected Material at a hearing for which it had fewer
 4 than 21 days' advance notice, the parties will meet and confer within a reasonable time before
 5 the hearing regarding moving to seal.

6 5.6 Secure Storage, No Export. Protected Material must be stored and maintained by a
 7 Receiving Party at a location in the United States and in a secure manner that ensures that access
 8 is limited to the persons authorized under this Order. To ensure compliance with applicable
 9 United States Export Administration Regulations, Protected Material may not be exported outside
 10 the United States or released to any foreign national (even if within the United States).

11 5.7 Legal Advice Based on Protected Material. Nothing in this Protective Order shall
 12 be construed to prevent Outside Counsel from advising their clients with respect to this case
 13 based in whole or in part upon Protected Materials, provided Outside Counsel does not disclose
 14 the Protected Material itself except as provided in this Order.

15 5.8 Limitations. Nothing in this Order shall restrict in any way a Producing Party's
 16 use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any way
 17 the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become
 18 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or
 19 known to the Receiving Party independent of the Producing Party; (iii) previously produced,
 20 disclosed and/or provided by the Producing Party to the Receiving Party or a non-party without
 21 an obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the
 22 Producing Party; or (v) pursuant to order of the Court.

23 6. **DESIGNATING PROTECTED MATERIAL**

24 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 25 or Non-Party that designates information or items for protection under this agreement must take
 26 care to limit any such designation to specific material that qualifies under the appropriate
 27 standards. The Designating Party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or delay the case development process or to impose unnecessary
7 expenses and burdens on other parties) expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it designated
9 for protection do not qualify for protection, the Designating Party must promptly notify all other
10 parties that it is withdrawing the mistaken designation.

11 6.2 Manner and Timing of Designations. Except as provided in section 6.2 (a) below,
12 or as otherwise stipulated or ordered, Discovery Material that qualifies for protection under this
13 agreement must be clearly so designated before or when the material is disclosed or produced. In
14 the event that original documents are produced for inspection, the original documents shall be
15 presumed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" during the inspection
16 and re-designated, as appropriate during the copying process.

17 (a) Information in documentary form: (e.g., paper or electronic documents
18 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), the Designating Party must affix the word(s) "CONFIDENTIAL" or "HIGHLY
20 CONFIDENTIAL—ATTORNEY'S EYES ONLY" to each page that contains Protected
21 Material. With respect to documents containing Protected Material produced in native format,
22 the Designating Party shall include the appropriate designation at the end of the filename for
23 each document. When native electronic files or documents are printed for use at deposition, in a
24 court proceeding, or for provision in printed form to an expert or consultant, the party printing
25 the electronic files or documents shall affix a legend to the printed document corresponding to
26 the designation of the Producing Party and including the production number and designation
27 associated with the native file. If a Party uses at a deposition a .tiff, .pdf, or other image format

1 version of a native document, that Party shall, upon request, provide a copy of the native file to
2 counsel for the witness and all Parties in attendance who are entitled to review the document
3 pursuant to this Protective Order.

4 (b) Testimony given in deposition or in other pretrial or trial proceedings:

5 The Parties and any participating Non-Parties must identify on the record, during the deposition,
6 hearing, or other proceeding, all protected testimony, without prejudice to their right to so
7 designate other testimony after reviewing the transcript. Any Party or Non-Party may, within 30
8 days after receiving the transcript of the deposition or other pretrial proceeding, designate
9 portions of the transcript, or exhibits thereto, as confidential. Transcripts containing Protected
10 Material shall have an obvious legend on the title page that the transcript contains Protected
11 Material and the title page shall be followed by a list of all pages (including line numbers as
12 appropriate) that have been designated as Protected Material and the level of protection being
13 asserted by the Designating Party. The Designating Party shall inform the court reporter of these
14 requirements. Until the expiration of the 30-day period for designation, any deposition transcript
15 shall be treated as if it had been designated “HIGHLY CONFIDENTIAL—ATTORNEY’S
16 EYES ONLY” in its entirety, unless otherwise agreed. However, upon a showing of good cause
17 by the Party seeking to rely on the transcript, e.g., for use in a scheduled filing with the Court,
18 the Parties may mutually agree to shorten the designation period. Any Party that wishes to
19 disclose the transcript, or information contained therein prior to the end of the 30-day period,
20 may provide written notice of its intent to treat the transcript as non-confidential, after which
21 time, any Party that wants to maintain any portion of the transcript as confidential must designate
22 the confidential portions within fourteen (14) days, or else the transcript may be treated as non-
23 confidential. Any Protected Material that is used in the taking of a deposition shall remain
24 subject to the provisions of this Protective Order, along with the transcript pages of the
25 deposition testimony dealing with such Protected Material.

26 Counsel for any Producing Party shall have the right to exclude from oral depositions,
27 other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person

1 who is not authorized by this Protective Order to receive or access Protected Material based on
2 the designation of such Protected Material. Such right of exclusion shall be applicable only
3 during periods of examination or testimony regarding such Protected Material.

4 If a Party or Non-Party desires to protect confidential information at trial, the
5 issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: The Producing Party must affix in a prominent place
7 on the exterior of the container or containers in which the information or item is stored the words
8 "CONFIDENTIAL " or "HIGHLY CONFIDENTIAL—ATTORNEY'S EYES ONLY." If only
9 a portion or portions of the information or item warrant protection, the Producing Party, to the
10 extent practicable, shall identify the protected portion(s).

11 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the Designating Party's
13 right to secure protection under this agreement for such material. The Producing Party must
14 notify all Receiving Parties that such Discovery Material is protected under one of the categories
15 of this Order within fourteen (14) days of the Producing Party learning of the inadvertent failure
16 to designate. The Producing Party shall reproduce the Protected Material with the correct
17 confidentiality designation within seven (7) days upon its notification to the Receiving Parties.
18 Designations of protected materials that take place after initial production shall be subject to the
19 same procedure and scrutiny applied to all other protective designations contemplated in this
20 agreement. Upon receiving the Protected Material with the correct confidentiality designation,
21 the Receiving Parties shall return or securely destroy, at the Producing Party's option, all
22 Discovery Material that was not designated properly.

23 7. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
25 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
27 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed. Any challenge to a designation of Discovery Material under
3 this Order shall be written, shall be served on outside counsel for the Producing Party, shall
4 particularly identify the documents or information that the Receiving Party contends should be
5 differently designated, and shall state the grounds for the objection.

6 7.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
7 regarding confidential designations without court involvement. The Producing Party shall have
8 the burden of justifying the disputed designation. Any motion regarding confidential
9 designations or for a protective order must include a certification, in the motion or in a
10 declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
11 with other affected Parties in an effort to resolve the dispute without court action. The
12 certification must list the date, manner, and participants to the conference. A good faith effort to
13 confer requires a face-to-face meeting or a telephone conference.

14 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Designating Party may file and serve a motion to retain confidentiality under
16 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable), or may request
17 that the parties follow the expedited joint motion procedure set forth in Local Civil Rule
18 37(a)(2). The burden of persuasion in any such motion shall be on the Designating Party.
19 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
20 unnecessary expenses and burdens on other parties) may expose the challenging Party to
21 sanctions. All Parties shall continue to maintain the material in question as confidential until the
22 court rules on the challenge.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
24 **OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels
26 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
27 “HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY,” that Party must:

(a) promptly notify the Designating Party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order from the court from which the subpoena or order issued, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its Protected Material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. DATA SECURITY

(1) Receiving Party shall in good faith implement an information security management system (“ISMS”) to safeguard Protected Materials, including reasonable and appropriate administrative, physical, and technical safeguards, and network security and encryption technologies governed by written policies and procedures, which shall comply with at least one of the then-current versions of the following standards: (a) the International Organization for Standardization’s 27001 standard; (b) the National Institute of Standards and Technology’s (NIST) 800-53 standard; (c) the Center for Internet Security’s Critical Security Controls; or (d) the most recently published version of another widely recognized industry or government cybersecurity framework. The Parties shall

1 implement multi-factor authentication¹ for any access to Protected Materials. By way of example
 2 only, the minimum multi-factor authentication factor required by this Section 9(1) of the Protective
 3 Order is to register a user's computer as a trusted device, after which that user can access Protected
 4 Material with their regular system username and password. Additionally, each Party shall
 5 implement encryption of all Protected Materials in transit outside of network(s) covered by the
 6 Party's ISMS (except as necessary to submit documents to the court), and at rest, where reasonably
 7 practical. A Party may satisfy this encryption requirement by, for example, using mandatory
 8 transport layer security ("TLS") encryption provided by an email service.

9 (2) If Receiving Party becomes aware of any unauthorized access, use, or disclosure of
 10 Protected Materials or devices containing Protected Materials, Receiving Party shall comply with
 11 all requirements of Section 10 of this Protective Order. Additionally, if Receiving Party becomes
 12 aware of any cyberattack or other deliberate security breach resulting in actual or potential
 13 unauthorized access to Protected Materials (including as a result of or following an inadvertent
 14 disclosure addressed by Section 10 below) ("Data Breach"), Receiving Party shall also promptly,
 15 and in no case later than 48 hours after learning of the Data Breach, notify Producing Party in
 16 writing and fully cooperate with Producing Party as may be reasonably necessary to (a) determine
 17 the source, extent, or methodology of such Data Breach, (b) to recover or to protect Protected
 18 Materials, (c) to satisfy Producing Party's legal, contractual, or other obligations, and/or (d) share,
 19 within 10 business days, the relevant ISMS policies and procedures that relate to the safeguarding
 20 of Protected Materials and that preceded the Data breach, in writing or otherwise. For the
 21 avoidance of doubt, notification obligations under this Section arise when the Receiving Party both
 22 (a) learns of a Data Breach, and (b) learns that any of the Producing Party's Protected Materials
 23
 24

25 ¹ Multi-factor authentication is "[a]uthentication using two or more factors to achieve authentication. Factors are (i)
 26 something you know (e.g., password/personal identification number); (ii) something you have (e.g., cryptographic
 27 identification device, token); and (iii) something you are (e.g., biometric)." National Institute of Standards and
 Technology (NIST), Special Publication SP 1800-12, Appendix B at 63, available at
<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1800-12.pdf>; *see also* NIST, Special Publication
 800-53, at 132, available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>.

1 are potentially subject to the Data Breach. The notification obligations set forth in this Section do
2 not run from the time the Data Breach itself;

3 (3) Receiving Party shall promptly comply with Producing Party's reasonable request(s) that
4 Receiving Party investigate, remediate, and mitigate the effects of a Data Breach and any potential
5 recurrence and take all reasonable steps to terminate and prevent unauthorized access. Receiving
6 Party shall promptly provide any information that is reasonably requested by Producing Party and
7 that relates to any such Data Breach, including but not limited to, the Protected Material that was
8 potentially impacted, the manner in which the Data Breach occurred, start or end date of the Data
9 Breach, date of discovery, and specific actions taken to contain, mitigate, or remediate the Data
10 Breach. For the avoidance of doubt, nothing in this Section 9 is intended to create a waiver of any
11 applicable privileges, including privileges applicable to a Party's investigation and remediation of
12 a Data Breach;

13 (4) If Receiving Party is aware of a Data Breach, the Parties shall meet and confer in good
14 faith regarding any adjustments that should be made to the discovery process and discovery
15 schedule in this action, potentially including but not limited to (1) additional security measures to
16 protect Discovery Material; (2) a stay or extension of discovery pending investigation of a Data
17 Breach and/or implementation of additional security measures; and (3) a sworn assurance that
18 Discovery Materials will be handled in the future only by entities not impacted by the Data
19 Breach. Further, the Receiving Party shall submit to reasonable discovery concerning the Data
20 Breach;

21 (6) Receiving Party shall comply with this Section 9 and any applicable security, privacy,
22 data protection, or breach notification laws, rules, regulations, or directives ("Applicable Data
23 Law"). If Receiving Party is uncertain whether a particular practice would conform with the
24 requirements of this Section 9, it may meet and confer with the other Parties; if any Party
25 believes that the proposed practice would violate this Protective Order, it may, within 10
26 business days, bring the dispute to the Court. The Party challenging the proposed practice would
27 bear the burden of demonstrating a violation.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 3 Material to any person or in any circumstance not authorized under this agreement, the
 4 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 5 access or disclosure, (b) investigate and report to Designating Party the scope of and
 6 circumstances of the unauthorized access or disclosure; (c) take immediate and reasonable steps
 7 to rectify the unauthorized access or disclosure, including using its best efforts to retrieve all
 8 unauthorized copies of the Protected Material and instituting additional security to prevent any
 9 further access or disclosure, (d) comply with all obligations under applicable laws relating to
 10 unauthorized access or disclosure, including security breach notification laws and other
 11 applicable laws, (e) inform the person or persons to whom unauthorized disclosures were made
 12 of all the terms of this Order, and (f) request that such person or persons execute the
 13 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 15 PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 17 produced material is subject to a claim of privilege or other protection, the obligations of the
 18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 19 provision is not intended to modify whatever procedure may be established in an e-discovery
 20 order or agreement that provides for production without prior privilege review. This Order
 21 invokes the protections afforded by Fed. R. Evid. 502(b). As provided under Fed. R. Evid.
 22 502(b) and 502(d) and subject to the limitations in Fed. R. Evid. 502(a), the disclosure of
 23 privileged material in connection with this litigation does not operate as a waiver in this action or
 24 any other action by the Producing Party of any privilege applicable to those documents,
 25 including the attorney-client privilege, attorney work-product protection, or any other privilege
 26 or protection recognized by law.

1 Upon a request from any Producing Party who has inadvertently produced Discovery
2 Material that it believes is privileged and/or protected, each Receiving Party shall immediately
3 return such Protected Material or Discovery Material and all copies to the Producing Party, except
4 for any pages containing privileged markings by the Receiving Party which shall instead be
5 destroyed and certified as such by the Receiving Party to the Producing Party.

6 Nothing herein shall prevent the Receiving Party from preparing a record for its own use
7 containing the date, author, addresses, and topic of the inadvertently produced Discovery
8 Material and such other information as is reasonably necessary to identify the Discovery
9 Material and describe its nature to the Court in any motion to compel production of the
10 Discovery Material.

11 In the event of a disclosure of any Discovery Material pursuant to this Order to any
12 person or persons not authorized to receive such disclosure under this Protective Order, the Party
13 responsible for having made such disclosure, and each Party with knowledge thereof, shall
14 immediately notify counsel for the Producing Party whose Discovery Material has been
15 disclosed and provide to such counsel all known relevant information concerning the nature and
16 circumstances of the disclosure. The responsible disclosing Party shall also promptly take all
17 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that
18 no further or greater unauthorized disclosure and/or use thereof is made.

19 **12. NON -TERMINATION AND RETURN OF DOCUMENTS**

20 Within 90 days after the termination of this action, including all appeals, each Receiving
21 Party must destroy all Protected Material, including all copies, extracts and summaries thereof.

22 The Receiving Party must submit a written certification to the Producing Party (and, if
23 not the same person or entity, to the Designating Party) by the 90-day deadline that affirms that
24 the Receiving Party has used reasonable efforts to destroy copies, abstracts, compilations,
25 summaries or any other format reproducing or capturing any of the Protected Material.

26 Notwithstanding this provision, Counsel are entitled to retain one archival copy of all
27 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,

1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain Protected Material. Counsel may not retain copies
3 of document productions. Any such archival copies that contain or constitute Protected Material
4 remain subject to this Stipulated Protective Order.

5 Even after final disposition of this litigation, the confidentiality obligations imposed by
6 this agreement shall remain in effect until a Designating Party agrees otherwise in writing or a
7 court orders otherwise.

8 **13. DISCOVERY FROM EXPERTS OR CONSULTANTS**

9 Absent good cause, drafts of reports of testifying experts, and reports and other written
10 materials, including drafts, of consulting experts, shall not be discoverable.

11 Reports and materials exempt from discovery under the foregoing Paragraph shall be
12 treated as attorney work product for the purposes of this case and Protective Order.

13 **14. MISCELLANEOUS**

14 (a) Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the Court in the future. By stipulating to this Order, the Parties do not
16 waive the right to argue that certain material may require additional or different confidentiality
17 protections than those set forth herein.

18 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that the
19 terms of this Protective Order shall survive and remain in effect after the Final Determination of
20 the above-captioned matter. The Court shall retain jurisdiction after Final Determination of this
21 matter to hear and resolve any disputes arising out of this Protective Order.

22 (c) Successors. This Order shall be binding upon the Parties hereto, their attorneys,
23 and their successors, executors, personal representatives, administrators, heirs, legal
24 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
25 experts, and any persons or organizations over which they have direct control.

26 (d) Right to Assert Other Objections. By stipulating to the entry of this Protective
27 Order, no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item. Similarly, no Party waives any right to object on any ground to use in
2 evidence of any of the material covered by this Protective Order. This Order shall not constitute
3 a waiver of the right of any Party to claim in this action or otherwise that any Discovery Material,
4 or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence
5 in this action or any other proceeding.

6 (e) Burdens of Proof. Notwithstanding anything to the contrary above, nothing in this
7 Protective Order shall be construed to change the burdens of proof or legal standards applicable in
8 disputes regarding whether particular Discovery Material is confidential, which level of
9 confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions
10 should apply.

11 (f) Modification by Court. This Order is subject to further court order based upon
12 public policy or other considerations, and the Court may modify this Order sua sponte in the
13 interests of justice. The Western District of Washington is responsible for the interpretation and
14 enforcement of this Order. All disputes concerning Protected Material, however designated,
15 produced under the protection of this Order shall be resolved by the Western District of
16 Washington.

17 (g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change in any
18 way the discovery provisions of the Western District of Washington, or the Court's own orders.
19 Identification of any individual pursuant to this Protective Order does not make that individual
20 available for deposition or any other form of discovery outside of the restrictions and procedures
21 of the Western District of Washington, or the Court's own orders.

22 DATED December 6, 2023.

23

24

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26

27

ORDER

IT IS SO ORDERED.

Dated this 15th day of December, 2023.

Kimberly A. Hanson

Kymberly K. Evanson
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Floyd v. Amazon.com, Inc. and Apple Inc.*, Case No. 2:22-cv-01599-JCC. I agree to comply
8 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
10 of contempt. I solemnly promise that I will not disclose in any manner any information or item
11 that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
12 with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 | City and State where sworn and signed: _____

18 Printed name: _____

19 || Signature: _____